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Nos. 02-241 & 02-516

IN THE
SUPREME COURT OF THE UNITED STATES

BARBARA GRUTTER
Petitioner,

v.

LEE BOLLINGER, ET AL.,
Respondents.

and

JENNIFER GRATZ AND
PATRICK HAMACHER,
Petitioners,

v.

LEE BOLLINGER, ET AL.,
Respondents.

ON WRIT OF CERTIORARI AND ON WRIT OF CERTIORARI
BEFORE JUDGMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF AMICUS CURIAE OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF RESPONDENTS

NATHALIE F.P. GILFOYLE
GENERAL COUNSEL
LINDSAY CHILDRESS-BEATTY
DEPUTY GENERAL COUNSEL
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street, N.E.
Washington, DC 20002
(202) 336-5500

PAUL R. FRIEDMAN
COUNSEL OF RECORD
WILLIAM F. SHEEHAN
SHEA & GARDNER
1800 Mass. Ave., N.W.
Washington, DC 20036
(202) 828-2000

Counsel For Amicus Curiae
American Psychological Association

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BRIEF OF THE
AMERICAN PSYCHOLOGICAL ASSOCIATION
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS [1/]

INTEREST OF *AMICUS CURIAE*

The American Psychological Association ("the APA") is a voluntary, nonprofit, scientific and professional organization founded in 1892. It is the major association of psychologists in the United States, with more than 155,000 members and affiliates. The objects of APA include advancing psychology as a means of promoting human welfare, diffusing psychological knowledge, and encouraging the application of research findings to the promotion of health and public welfare.

The APA has 55 divisions representing the full array of areas of emphasis within the field of psychology. APA's governing body, the APA Council of Representatives, includes representatives of all its divisions. In 1999, the APA Council of Representatives adopted a resolution in strong support of affirmative action.

The work of two of APA's divisions is particularly focused on areas relevant to the issues before the Court. Division 9 of the APA, the *Society for the Psychological*

[1/] The parties have consented to the filing of this brief in letters of consent on file with the Clerk. No counsel for any party had any role in authoring this brief, and no one other than the *amicus curiae* provided any monetary contribution to its preparation or submission.

Study of Social Issues (SPSSI), is an international group of over 3500 psychologists, allied scientists, students, and others who share a common interest in research on the psychological aspects of important social issues. SPSSI seeks to bring theory and practice into focus on human problems of the group, the community, and nations, as well as global problems. It does so by supporting both research and educational activities concerned with social problems. For almost 70 years, SPSSI has supported scientific research on the causes and consequences of racial and ethnic prejudice.

Division 45 of the APA, the *Society for the Psychological Study of Ethnic Minority Issues*, is the representative body for psychologists who conduct research on ethnic minority concerns or who apply psychological knowledge and techniques to ethnic minority issues. With over 1,000 members, Division 45 seeks to advance psychology as a science and to promote public welfare through research, to apply research findings towards addressing ethnic minority issues, and to encourage professional relationships among psychologists with these interests.

The APA places a high priority on issues related to the education of racial and ethnic minorities. See APA Resolution on Ethnic Minority Recruitment and Retention (Feb. 1994), *at* http://www.apa.org/pi/oema/oemares.html. That is because the APA recognizes that racial and ethnic minorities are underrepresented among the "students, faculty, practitioners, and researchers in the field of psychology," and that the psychology profession "will need to become increasingly conversant on issues relevant to an increasingly diverse student population and pluralistic society." *Id.* Accordingly, diversity in higher education is of paramount importance to the APA and, as we shall demonstrate, research by our members bears directly on the

question whether diversity also constitutes a compelling governmental interest.[2/]

INTRODUCTION AND SUMMARY

This brief makes three points. In Part I below, we show that racial and ethnic discrimination and prejudice persist in American society and that numerous recent studies prove that many people who believe themselves unbiased and disclaim racist attitudes continue to harbor and act in response to implicit (unconscious) but demonstrable racial and ethnic stereotyping. We then discuss recent psychological studies showing that such stereotyping may be ameliorated through contact between students of different racial and ethnic backgrounds, thereby strongly supporting the conclusion of the courts below that diversity in higher education is a compelling governmental interest.

Our support for diversity in higher education reflects the view that the government has a compelling interest in promoting future harmonious and productive relations among different racial and ethnic groups as they must increasingly interact in a shrinking global community.

We show in Part II that the methodology of the Gurin Report, relied on by the University of Michigan to support its diversity in admissions program, is consistent with scientific standards for research and has been unfairly and incorrectly

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[2/] The APA wishes to acknowledge the assistance in the preparation of this brief of Mahzarin R. Banaji, PhD, Irene Blair, PhD, Faye Crosby, PhD, John Dovidio, PhD, Jeffery Mio, PhD, Louis Penner, PhD, Paul Sackett, PhD, Stanley Sue, PhD, Sam Bagenstos, Esq., Heather Gerken, Esq., and Margo Schlanger, Esq.

assailed, in particular by the National Association of Scholars.

In Part III we address the issue of cultural competence. Focusing first on the profession of psychology, we show that, as American society becomes increasingly diverse, the profession needs to become culturally competent as clinicians, researchers, consultants, and educators. We also urge, however, that the concept of cultural competence is not limited to the psychology profession, but extends across the spectrum of American professional and business endeavors. Diversity in higher education is critical to the acquisition of cultural competence, for there is no substitute for interaction among students from diverse backgrounds who can teach each other about the concerns and values of their different communities, and whose intermingled presence itself will lower the barriers to an understanding and acceptance of each other.

I.
DIVERSITY IN HIGHER EDUCATION PROMOTES HARMONIOUS AND PRODUCTIVE INTERGROUP RELATIONS

A. Discrimination And Prejudice Persist In Significant And Demonstrable Ways, Even In Many Who Believe That They Are Not Prejudiced And Do Not Discriminate

1. **Discrimination**. Although the Nation has made remarkable strides in eliminating overt discrimination against racial and ethnic minorities, numerous studies over the past twenty years demonstrate that discrimination persists in almost all aspects of American life. Many of these studies are summarized in Faye J. Crosby, Affirmative

Action Is Dead; Long Live Affirmative Action (Yale Univ. Press) (forthcoming) at 225-228 ("Crosby").[3/] In addition, the brief *amicus curiae* in this case of the American Sociological Association *et. al.*, to which we respectfully refer the Court, reviews at some length the large body of research that demonstrates that racial and ethnic minorities continue to have unequal access to jobs, housing, and education.

2. **Prejudice**. Whereas the term "discrimination" describes unequal treatment, "prejudice" has to do with thoughts and feelings. See Crosby, at 20. Research "shows a dramatic decrease in the proportion of White Americans who express overtly hostile feelings or overtly derogating thoughts about people of color." Crosby, at 229.[4/] That has led some scholars to discount racism as an explanation for the serious inequalities that beset racial and ethnic minorities.[5/] But in fact a series of recent studies show that prejudice is tenacious and pervasive even among those who

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[3/] We are prepared to lodge a copy of the manuscript with the Clerk of the Court.

[4/] In 1948, for example, 63% of White respondents objected to having a Black neighbor, and 41% objected to having Mexican or Mexican American neighbors. By 1987, the objectors had dropped to 13% and 9%. John F. Dovidio *et al.*, *Cognitive and Motivational Bases of Bias: Implications of Aversive Racism for Attitudes toward Hispanics*, *in* Hispanics In The Workplace 75, 90-91 (Stephen B. Knouse *et al.* eds., 1992). Support for integrated schooling grew from 32% in 1942 to 90% in 1983. Howard Schuman *et al.*, Racial Attitudes in America: Trends and Interpretations (1988).

[5/] See, *e.g.*, Stephen Thernstrom & Abigail Thernstrom, America In Black and White: One Nation, Indivisible (1997).

maintain explicit attitudes of equality. Thus, many people who firmly believe that they have open and favorable attitudes about people of various races and ethnicities will demonstrate that they implicitly (unconsciously) harbor a variety of racial and ethnic prejudices that can translate into subtle discriminatory behaviors.

These unconscious prejudices have been described as "aversive racism" – so-called because those who harbor prejudice would find it aversive to recognize their own racism. "* * * [R]acial bias is expressed in indirect ways that do not threaten the aversive racist's non-prejudiced self-image. * * * [D]iscrimination occurs when [that] bias is not obvious or can be rationalized on the basis of some factor other than race." John F. Dovidio & Samuel L. Gaertner *et al.*, *Aversive Racism and Selection Decisions: 1989 and 1999*, 11 Psychol. Sci. 315 (2000).

Aversive racism has been demonstrated by (among others) a series of carefully designed experiments among young, liberal Whites. In 1989, the researchers asked White college students to evaluate candidates for a position of resident counselor. One third of the candidates were highly qualified, one third were distinctly unqualified, and the middle third were strong candidates but not unambiguously so. The students regularly endorsed the candidates who were clearly well qualified, whether the candidates were White or Black.[6/] Similarly, the students rejected the unqualified candidates equally without regard to race. But when the candidates were of intermediate quality, White students recommended hiring the White candidate significantly more often than the Black candidate and felt more strongly about

[6/] Throughout this brief "Black" and "African-American" are used interchangeably.

their recommendations for the Whites than for the Blacks. Ten years later the researchers repeated the experiment with a new crop of students and got exactly the same results. During those ten years, the students showed a noticeable decrease in the direct verbal expression of racial prejudice – but their actual behavior remained unchanged.[7/]

One reason for the existence and persistence of prejudice is straightforward. We need categories to absorb and understand our world. Prejudice and stereotypes are the natural by-products of ordinary perception, categorization, learning, memory, and judgment. There is, accordingly, widespread agreement among social scientists that social categorization processes – including racial and ethnic stereotyping – are virtually automatic, operating at perhaps a more basic level and often independent of conscious attitudes, beliefs, and perceptions.[8/]

Social scientists have devised a number of tests for measuring the strength of unconscious stereotyping in different individuals. One, widely used, is the Implicit

[7/] John F. Dovidio & Samuel L. Gaertner *et al.*, *Aversive Racism and Selection Decisions: 1989 and 1999*, 11 Psychol. Sci. 315 (2000). Dovidio and Gaertner are not the only experimental social psychologists to document the persistence of racial preferences. See, *e.g.*, Monica Biernat & Theresa K. Biernat, *Categorization and Stereotyping: Effects of Group Context on Memory and Social Judgment*, 29 J. Experimental Soc. Psychol. 166 (1993).

[8/] See, e.g., Steven J. Spencer *et. al., Automatic Activation of Stereotypes: The Role of Self-Image Threat,* 24 Personality & Soc. Psychol. Bull. 1139 (Nov. 1998); J. Blascovich *et al.*, *Racism and Racial Categorization*, 72 J. Personality & Soc. Psychol. 1364 (June 1997).

Association Test (IAT).[9/] It is a reaction time experiment, measuring the speed with which two concepts can be associated. Not surprisingly, people quickly complete the task when "insects" and "bad" are paired together, and respond to the pairing of "insects" and "good" much more slowly. Because reaction times are mapped in milliseconds, the associative process is automatic and therefore not subject to the kind of conscious control that otherwise makes it difficult to know whether experiment participants are producing results according to consciously desired outcomes.

The results of the research on associative processes conclusively demonstrate that unconscious stereotyping and prejudice, including race stereotyping, is widespread.[10/] To take but one example, test respondents consistently make more ready associations between, on the one hand, faces of African Americans and words having negative concepts (*e.g.*, bomb, devil, awful) and, on the other, faces of Whites and positive concepts (*e.g.* peace, joy, love). Hundreds of thousands of individuals have taken the test producing similar results.

[9/] Anthony G. Greenwald *et. al.*, *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. Personality & Soc. Psychol. 1464 (1998).

[10/] See, e.g., Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. Personality & Soc. Psychol. 5 (Jan. 1989); Steven J. Spencer *et. al.*, *Automatic Activation of Stereotypes: The Role of Self-Image Threat*, 24 Personality & Soc. Psychol. Bull. 1139 (Nov. 1998). See also, John F. Dovidio *et al.*, *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 J. Experimental Soc. Psychol. 510 (1997).

3. Unconscious Stereotyping And Biased Behavior.

Although implicit prejudices operate in the unconscious mind, they can have significant real-world effects. Recent empirical research indicates that automatic prejudice plays an important role in producing discriminatory behavior and judgments[11/] and that measures of implicit prejudice are significant predictors of the level of discriminatory behaviors and judgments.[12/] For example, people high in implicit prejudice are unfriendly towards African American interaction partners,[13/] and form negative and stereotypical impressions of minorities.[14/]

[11/] Russell H. Fazio & Michael A. Olson, *Implicit Measures in Social Cognition Research: Their Meaning and Use*, 54 Ann. Rev. Psychol. 297, 306, 310 (2003).

[12/] See, e.g., Allen R. McConnell & Jill M. Liebold, *Relations Among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes*, 37 J. Experimental Soc. Psychol. 435 (2001); William von Hippel *et al.*, *The Linguistic Intergroup Bias as an Implicit Indicator of Prejudice*, 33 J. Experimental Soc. Psychol. 490 (1997); Denise Sekaquaptewa *et al.*, *Stereotypic Explanatory Bias: Implicit Stereotyping as a Predictor of Discrimination*, 39 J. Experimental Soc. Psychol. 75 (2003).

[13/] John F. Dovidio *et al.*, *Implicit and Explicit Prejudice and Interracial Interactions*, 82 J. Personality & Soc. Psychol. 62 (Jan. 2002); John F. Dovidio *et al.*, *On the Nature of Prejudice: Automatic and Controlled Processes*, 33 J. Experimental Soc. Psychol. 510 (1997); Russell H. Fazio *et al.*, *Variability in Automatic Activation as an Unobtrusive Measure of Racial Attitudes: A Bona Fide Pipeline?*, 69 J. Personality & Soc. Psychol. 1013 (Dec. 1995); Allen R. McConnell & Jill M. Liebold, *Relations among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes*, 37 J. Experimental Soc. Psychol. 435 (2001).

Research shows that implicit prejudice and stereotypes become exaggerated for token minorities in groups. Psychologists have identified a number of negative processes associated with token representation, one of which is increased visibility and the likelihood that tokens are treated in terms of their group identity rather than personal qualities.[15/] As a consequence, people with token status are frequently "encapsulated" in roles stereotypic of their group in employment settings.[16/] Moreover, people who feel that they are tokens of their group experience negative feelings of

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[14/] See Robert C. Dunton & Russell H. Fazio, *An Individual Difference Measure of Motivation to Control Prejudiced Reactions,* 23 Personality Soc. Psychol. Bull. 316 (1997); Florak *et al., When Do Associations Matter? The Use of Automatic Associations Toward Ethnic Groups in Person Judgments*, 37 J. Experimental Soc. Psychol. 518 (2001); William von Hippel *et al., The Linguistic Intergroup Bias As an Implicit Indicator of Prejudice*, 33 J. Experimental Soc. Psychol. 490 (1997); Russell H. Fazio & Laura E. Hilden, *Emotional Reactions to a Seemingly Prejudiced Response: The Role of Automatically Activated Racial Attitudes and Motivation to Control Prejudiced Reactions*, 27 Personality and Soc. Psychol. Bull. 538 (May 2001).

[15/] Shelly E. Taylor *et al., Categorical and Contextual Bases of Person Memory and Stereotyping*, 36 J. Personality and Soc. Psychol. 778 (July 1978).

[16/] E.g., women in nurturing roles; *see* J. Yoder, *Looking Beyond Numbers: The Effects of Gender Status, Job Prestige, and Occupational Gender-Typing on Tokenism Processes*, 57 Soc. Psychol. Q. 150 (1994).

distinctiveness,[17/] associated with sensitivity to being stereotyped, and a loss of self-confidence,[18/] which can interfere with cognitive performance.[19]

Feelings of distinctiveness can also invoke "stereotype threat" whereby students behave in ways that conform to the negative cultural stereotype of their group, even when it has an adverse effect on cognitive performance.[20/]

These findings demonstrate that implicit prejudices can be a major factor in limiting both the opportunities of members of minority groups and the effectiveness of culturally diverse work groups.[21/]

[17/] Yolanda F. Niemann & John F. Dovidio, *Tenure, Race/Ethnicity and Attitudes Toward Affirmative Action: A Matter of Self-Interest?*, 41 Sociological Perspectives 783 (1998).

[18/] Laurie L. Cohen and Janet K. Swim, *The Differential Impact of Gender Ratios on Women and Men: Tokenism, Self-Confidence, and Expectations*, 21 Personality & Soc. Psychol. Bull. 876 (Sept. 1995).

[19/] Charles G. Lord & Delia S. Saenz, *Memory Deficits and Memory Surfeits: Differential Cognitive Consequences of Tokenism for Tokens and Observers*, 49 J. Personality & Soc. Psychol. 918 (Oct. 1985).

[20/] *See generally* Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and performance*, 52 Am. Psychol. 613 (June 1997).

[21/] Decades of discrimination have left ethnic minority students disproportionately condemned to be educated in under-funded or impoverished schools where they have less opportunity than students at affluent schools to demonstrate that they are capable of

B. Diversity In Higher Education Reduces Unconscious Stereotyping And Promotes Productive Intergroup Relations

Automatic biases cannot be eliminated merely by conscious efforts to develop racially tolerant attitudes. Rather, there is "abundant evidence that stereotypes that operate unconsciously defend their territory fiercely, influencing social interactions even when perceivers are consciously vigilant and motivated to defeat them."[22/]

But it does not follow that unconscious biases cannot be combated and defeated. Rather, one promising strategy for attacking unconscious biases is to "create the social conditions that allow new associations and new learning about social groups that blur the bright line that demarcates

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performing well in challenging courses. Jonathan Kozol, Savage Inequities: Children in America's Schools (1991). "[B]ecause racism targets and injures individuals based on their group membership, its antidote must also target the group if its individual members are to overcome barriers to equal opportunity." Michele A. Wittig, *Taking Affirmative Action in Education and Employment*, 52 J. Soc. Issues 145, 157 (1996).

[22/] Mahzarin R. Banaji & Anthony G. Greenwald, *Implicit Gender Stereotyping in Judgments of Fame*, 68 J. Personality & Soc. Psychol. 181, 197 (1995); Irene V. Blair, & Mahzarin R. Banaji, *Automatic and Controlled Processes in Stereotype Priming*, 70 J. Personality & Soc. Psychol. 1142 (1996); Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 Psychol. Review 4 (1995).

social groups."[23/] After all, if stereotypes represent our classification strategy for making sense of a complex world, then they are necessarily shaped by the world we are classifying.[24/] If we meaningfully change that world – "the larger societal context that controls these phenomena"[25/] – we can thereby change individuals' classification strategies and thus reduce both unconscious bias and its behavioral effects.

In keeping with these premises, considerable research has been undertaken recently into the malleability of unconscious stereotyping. It proves, as Justices of the *Bakke* Court understood and as our intuitive instincts might predict, that positive exposure to members of other racial groups helps reduce such biases.[26/] That research is consistent with,

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[23/] Mahzarin R. Banaji *et al.*, *The Social Unconscious*, *in* Blackwell Handbook of Social Psychology (A. Tesser & N. Schwartz eds., 2001)

[24/] Shelly E. Taylor *et al.*, *Categorical and Contextual Bases of Person Memory and Stereotyping*, 36 J. Personality and Soc. Psychol. 778 (July 1978); Charles G. Lord & Delia S. Saenz, *Memory Deficits and Memory Surfeits: Differential Cognitive Consequences of Tokenism for Tokens and Observers*, 49 J. Personality & Soc. Psychol. 918 (Oct. 1985). Indeed, there is "clear evidence that automatic responses to category cues depend on the surrounding context." Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 Personality & Soc. Psychol. Rev. 242 (2002).

[25/] Susan T. Fiske, *Stereotyping, Prejudice, and Discrimination*, *in* 2 The Handbook of Soc. Psychol. (D. Gilbert *et. al.* eds., 1998).

[26/] Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 Personality & Soc. Psychol. Rev. 242 (2002); see *Regents of the University of California* v. *Bakke*, 438 U.S. 265, 314 (1978) (Opinion of Powell, J.)

and reinforces, the long-standing finding that positive contact between people of different races and ethnicities "typically reduces intergroup prejudice."[27/] For example, in one recent study White students who interacted with a Black experimenter showed significantly reduced automatic race prejudice, compared to interaction with a White experimenter.[28/]

Indeed, a thorough review of the field suggests that "face to face interaction * * * is importantly related to reduced prejudice."[29] The beneficial effects of such contact with other groups emerge across many prejudice measures, outgroup targets, and contact settings.

These recent findings give even more credence to the testimony of leading educators and psychologists advanced by the University of Michigan in the District Courts below, which demonstrated that attending college in a diverse setting reduces stereotyping and results in "more diverse friends, neighbors, and work associates." Expert Reports, 115. Moreover, the research we have described helps to explain why simply taking diversity workshops without minorities participating or reading great works by minority leaders (which are alternative approaches recommended by

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[27/] Thomas Pettigrew & Linda R. Tropp, *Does Intergroup Contact Reduce Prejudice? Recent Meta-Analytic Findings, in* Reducing Prejudice and Discrimination 93 (Stuart Oskamp ed., 2000).

[28/] Brian S. Lowery *et. al.*, *Social Influence Effects On Automatic Racial Prejudice*, 81 J. Personality & Soc. Psychol. 842 (Nov. 2001)

[29] Thomas Pettigrew & Linda R. Tropp, *Does Intergroup Contact Reduce Prejudice? Recent Meta-Analytic Findings, in* Reducing Prejudice and Discrimination 93, 109 (Stuart Oskamp ed., 2000).

opponents of race conscious admissions policies) will be ineffective in removing prejudice and stereotypes and allowing the kind of deep and complex multi-cultural thinking that the University wishes to foster.

In sum, extensive recent psychological research demonstrates that unconscious racial and ethnic stereotyping and prejudice are pervasive and persistent in our society. Other research shows, however, that these implicit attitudes and responses can be ameliorated when students from diverse racial and ethnic backgrounds live and work with each other intensively, both in and out of the classroom. We recognize that "societal discrimination" has been ruled an inadequate basis for raced-based classifications designed to provide "raced-based relief." *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469 (1989). But we believe that, putting aside the consideration of remedies for past wrongs, diversity may constitute a compelling governmental interest because it is critical to promoting future harmonious and productive relations among different racial and ethnic groups as they must increasingly interact in a shrinking global community. Accordingly, the research results we have described above strongly support the conclusion of the Sixth Circuit below that the government has a compelling interest in creating a racially diverse student body in higher education.

II.

THE GURIN REPORT PROVIDES SOUND EVIDENCE TO SUPPORT THE CONCLUSION THAT THE GOVERNMENT'S INTEREST IN EDUCATIONAL DIVERSITY IS COMPELLING

The District Court in *Gratz* concluded, based upon the record before it, that "a racially and ethnically diverse student body produces significant educational benefits such

that diversity, in the context of higher education, constitutes a compelling governmental interest under strict scrutiny." *Gratz* v. *Bollinger*, 122 F. Supp. 2d 811, 824 (E.D. Mich. 2000), *cert. granted*, 123 S. Ct. 602 (2002). In reaching that conclusion, the court relied in part on research undertaken by Dr. Patricia Y. Gurin, professor of psychology and women's studies at the University of Michigan.[30/] The court quoted with approval the report's conclusion that "students learn better in a diverse educational environment, and they are better prepared to become active participants in our pluralistic, democratic society once they leave such a setting." Id. at 822.

Dr. Gurin's work analyzed three databases. The first contained initial, 4-year, and 9-year national data involving 184 colleges and universities from the Cooperative Institutional Research Program conducted by UCLA's Higher Education Research Institute. The other two provided a more in-depth look at diversity experiences at the University of Michigan. One was the Michigan Student Survey, conducted prior to these lawsuits and involving initial and 4 year data from the 1990 entering undergraduate class. The other contained pre-participation, class completion, and 4 year data from a study of those in the 1990 entering class who took an introductory course in the Intergroup Relations, Conflict and Community Program at the University. By examining these three databases, Dr. Gurin was able to take both a "macro" and "micro" look at

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[30/] Expert Report of Patricia Y. Gurin, *Gratz v. Bollinger,* No. 97-75321 (E.D. Mich.) & *Grutter v. Bollinger,* No. 97-75928 (E.D. Mich.), *in* The Compelling Need for Diversity in Higher Education 99, 100 (1999) ("Gurin Report").

how diversity experiences in higher education are related to educational and citizenship outcomes.[31/]

Dr. Gurin's analysis of the three databases found consistent, statistically-significant results. In particular, she found that opportunities for enrollment in ethnic studies courses and classes dealing with issues of race and ethnicity, and for informal interactions with racial and ethnic minorities, including both friendships and more general interactions, were directly linked to such favorable outcomes as less automatic, improved active thinking; more active engagement in the learning process; increased ability to understand the perspectives of others; and greater motivation and engagement in society. Gurin Report at 146.

Amici supporting petitioners have attacked Dr. Gurin's research with more vigor than accurate scientific criticism. But as we now show, the critiques themselves depend on numerous flawed assumptions and methods that render them unpersuasive.

First, the Gurin Report has been wrongly criticized for not comparing the levels of diversity in student bodies at various universities ("structural diversity") directly with educational outcomes. Brief for *Amicus Curiae* National Association of Scholars ("NS") in Support of Petitioners in *Gratz v. Bollinger*, No. 02-516, at 7. But Dr. Gurin's research was not focused on structural diversity by itself. What her research shows is that structural diversity is one

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[31/] In all three sets of analyses, to the extent possible, Dr. Gurin statistically accounted for or "controlled" for other variables which were "known or expected to contribute" to the outcomes in order to account for these variable's possible effects so as not to overestimate the effects. Gurin Rpt. App C. at 1.

factor making possible campus diversity experiences that are associated with learning outcomes.[32/] A campus could be full of minority students yet still have a segregated environment without meaningful interactions between different racial and ethnic groups. Dr. Gurin finds that interactions between groups are needed to produce educational benefits, and posits that a university must foster such interactions.[33/] In Dr. Gurin's words, "Structural diversity is essential but, by itself, usually not sufficient to produce substantial benefits; in addition to being together on the same campus, students from diverse backgrounds must also learn about each other in the courses they take and in informal interaction outside of the classroom." Id. at 6.[34/]

Second, National Association of Scholars attacks the Gurin Report on the ground that, for the vast majority of her measures, she reported that even extremely large increases in her diversity measures account for less than 1 percent of student learning outcomes. NS Gratz Br. at 18. Labeling these measures as showing either no effects or "only a miniscule effect on students," NS argues that the Gurin report

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[32/] Evidence for the Educational Benefits of Diversity in Higher Education: Response to the Wood & Sherman Critique by the National Association of Scholars of the Expert Witness Report of Patricia Gurin in *Gratz* v. *Bollinger* and *Grutter* v. *Bollinger*, by Patricia Gurin, May 30, 2001, *at* http://www.umich.edu/~urel /admissions/research/ ("Gurin Supp. Report").

[33/] For further insight into why this may be so, see the discussion of the malleability of implicit stereotypes at 12-13 *supra*.

[34/] See also, Patricia Gurin *et. al., Diversity and Higher Education: Theory and Impact on Educational Outcomes*, 72 Harv. Educ. Rev. 330, 333 (2002) ("[S]tructural diversity is a necessary but insufficient condition for maximal educational benefits * * *.").

is irrelevant to the case. Id. at 18-19. But the small effects reported by Dr. Gurin are due, in part, to her separate consideration of each individual experience or outcome in order to show "a remarkable consistency of results." Gurin Supp. Rep. at 8. The effect size for any single measure will often be small because a measure of an individual experience or outcome will typically have low reliability; and reliability will set limits on effect size. However, replicating findings across several measures suggests a consistent and stable set of results unlikely to be due to chance.

While Dr. Gurin's approach is an acceptable research strategy, psychologists often aggregate individual measures into indices when multiple measures examining a common theme are studied (*e.g.*, combining five measures dealing with citizenship behaviors into an overall index of citizenship). Such indices or aggregations are commonly used because they increase reliability,[35/] thus minimize the impact of measurement error or "noise" for any one measure. When Dr. Gurin's individual measures are aggregated, subsequent findings using these indices show stronger relationships than are observed with the individual measures, thus refuting the claim that the effects in her research are trivial. These indices provide further evidence of the statistically significant relationship between both classroom/informal interactions and learning/democracy outcomes. Gurin Supp. Rep. at Table 1.

The NS critique also fails to recognize that although effect size is widely used in social and behavioral research as a measure of the strength of a relationship, "a large effect size is not the only way to demonstrate that an effect is

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[35/] Seymour Epstein, *Aggregation and Beyond: Some Basic Issues on the Prediction of Behavior*, 51 J. Personality 360 (1983).

important."[36/] The key point is that the importance of the findings depends upon the context in which they are made. Small effect sizes may have enormous impact over time.[37/]

For example, today, physicians routinely advise men over a certain age to take an aspirin each day to prevent heart attacks. In the original study that led to this advice, the effect size between taking an aspirin and having a heart attack was .0011 -- which resulted in almost twice as many heart attacks in the placebo group as in the aspirin group.[38/] The effect was considered so important that the study was discontinued early because it was determined that aspirin could no longer ethically be withheld from the placebo-control group.[39/]

[36/] Deborah A. Prentice & Dale T. Miller, *When Small Effects Are Impressive*, 112 Psychol. Bull. 160 (July 1992).

[37/] See, e.g., Douglas G. Mook, *In Defense of External Invalidity*, 38 Am. Psychol. 379 (Apr. 1983); Robert P. Abelson, *A Variance Explanation Paradox: When a Little is a Lot*, 97 Psychol. Bull. 129 (Jan. 1985); Robert Rosenthal & Donald B. Rubin, *A Note on Percent Variance Explained as A Measure of the Importance of Effects*, 9 J. Applied Soc. Psychol. 395 (1979).

[38/] Robert Rosenthal, *How Are We Doing in Soft Psychology?*, 45 Am. Psychol. 775 (June 1990).

[39/] Steering Committee of the Physician's Health Study Research Group, *Preliminary Report: Findings From The Aspirin Component Of The Ongoing Physicians' Health Study (Special Report)*, 318 New Eng. J. Med. 262 (Jan. 1988). See also, Deborah M. Barnes, *Promising Results Halt Trials of Anti-AIDS Drug AZT*, 234 Science 15 (Oct. 1986). (The clinical trials of the drug AZT, now widely prescribed for people with AIDS, were cancelled because it was felt that the benefits of AZT (an effect size of .073) were too great to deny it to the patients in the control condition); Robert Rosenthal, *Methodology, in* Advanced Soc. Psychol. 17, 35 (Abraham Tesser ed., 1995) (The effect size in the

Moreover, in higher education, involving some 15 million college students plus additional graduate students every year, even small benefits can yield substantial rewards.

Third, National Association of Scholars erroneously accuses Dr. Gurin of having replaced the accepted standard for categorizing a finding as statistically significant (5%) with one that allowed her to exaggerate the importance and size of her results. NS Gratz Br. at 19-20. Dr. Gurin did use the 5% level of significance for her analyses of the large samples of White students. But due to the small numbers of students in the minority samples, she chose a different level (10%). Gurin Report at 115. That decision reflects a methodologically sound balancing of concerns for "Type I" error (finding significance when the result is in actuality by chance) and "Type II" error (finding no significance when in fact there is a significant relationship). Dr. Gurin's decision to use a less strict level of significance for her small sample was an eminently reasonable research decision. See, e.g., Jacob Cohen, Statistical Power Analysis for the Behavioral Sciences (1988).

Fourth, the National Association of Scholars asserts that Dr. Gurin's findings are flawed because they rely upon self-reports instead of more objective outcome measurements. NS Gratz Br. at 16. But in fact use of self-report measures is common practice in social science research that involves large data bases. Moreover, a focus on what National Association of Scholars terms "traditional measurements of academic outcome," such as "grades, graduation rates, admissions to graduate school, and performance on seven standardized tests," NS Gratz Br. at

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original trials of Cyclosporine, a drug that reduces the likelihood of organ rejection, was .0225).

13, takes an unrealistically narrow view of academic achievement and fails to capture a broad range of outcomes widely valued by educational institutions, such as, for example, continuous learning, intellectual interest and curiosity, multicultural tolerance and appreciation, interpersonal skills, and social responsibility, citizenship, and involvement.[40/]

Fifth, the National Association of Scholars faults Dr. Gurin's research on the ground that various classroom diversity experiences she finds relevant to her conclusions (such as enrollment and participation in ethnic studies courses and attending racial/cultural awareness workshops) could be equally beneficial to White students without the "presence on campus of *any* students of another race." NS Gratz Br. at 10. But it should be obvious that, in the real world, discussing racial and ethnic issues in all-White settings is bound to have a different impact on the students than if racial and ethnic minorities were also present and participating. Indeed, even National Association of Scholars concedes that "informal interaction" such as having close friends of another race, interracial socializing, and sharing personal feelings and problems with members of other races, "presuppose[s] the presence of *some* students of another race on campus." NS Gratz Br. at 10.

In sum, the methodology of the Gurin Report is consistent with scientific standards for research. Moreover,

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[40/] Such outcome criteria can be identified through a web search of colleges and universities; from university resources; and from related research. See Paul R. Sackett *et al.*, *High-Stakes Testing in Employment, Credentialing, and Higher Education: Prospects in a Post-Affirmative-Action World*, 56 Am. Psychol. 302 (Apr. 2001).

Dr. Gurin's research confirms numerous studies brought to the Court's attention by other amici and respondents which demonstrate that diversity experiences in college and graduate school are associated with a variety of important educational objectives, such as the ability to think in "deeper, more complex ways" (Gurin Report at 100); to develop "more positive views of conflict, and the perception that diversity is not inevitably divisive in our society" (*id.* at 127); and to become more motivated and competent to live and work in a complex and diverse society" (*id.* at 101, 127).

III.

DIVERSITY IN HIGHER EDUCATION LEADS TO CULTURAL COMPETENCE, WHICH IS CRITICAL TO THE PSYCHOLOGY PROFESSION AND TO SOCIETY AT LARGE

A. Psychologists Must Be Culturally Competent In An Increasingly Diverse Society.

Our daily experience teaches us that our society is becoming increasingly diverse, and the studies tell us that the trend will continue apace. By one estimate, 47% of all Americans by 2050 will be African American, Latino, Asian, or Native American. See Minority Business Development Agency, U.S. Dep't of Commerce, Dynamic Diversity (1999), at 8. The U.S. Bureau of the Census has put the figure at 50%. U.S. Bureau of the Census, Statistical Abstracts of the United States: 1995 (115th ed. 1995).

Delivering appropriate care to this burgeoning population will be a major concern to the Nation's health care institutions and professions. A recent report by the Department of Health and Human Services "documents the existence of striking disparities for minorities in mental health services and the underlying knowledge base. *A major*

finding of this [study] is that racial and ethnic minorities bear a greater burden from unmet mental health needs and thus suffer a greater loss to their overall health and productivity."[41] Given that racial and ethnic minorities will soon comprise half of the country's population, "the future mental health of America as a whole will be enhanced substantially by improving the health of racial and ethnic minorities." HHS Report at 168.[42]

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[41] U.S. Dep't of Health & Human Services, Mental Health: Culture, Race, and Ethnicity – A Supplement to Mental Health: A Report of the Surgeon General (2001) (hereinafter "HHS Report"), at 3 (emphasis in original). Despite the need for treatment, many ethnic clients tend to avoid using services or prematurely terminate, once in therapy. For example, Latinos and Asians have been found to consistently underutilize mental health services. African Americans have been found to have high dropout rates from treatment. Stanley Sue, *In Search of Cultural Competence in Psychotherapy and Counseling*, 53 Am. Psychol. 440 (1998). The HHS Report echoes other findings regarding health care generally. See, Institute of Medicine, Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care (Smedley *et al.* eds., 2002); special issue of Health Psychology, Vol 14(7), Dec. 1995.

[42] Due to the critical importance of the issue to the nation's health, nearly all institutes of NIH have developed research agendas on minority health and health disparities. See, e.g., the strategic plans for the National Cancer Institute, *at* http://plan.cancer.gov/public/disparities.htm; National Heart, Lung, and Blood Institute, *at* http://www.nhlbi.nih.gov/resources/docs/plandisp.htm; National Institute of Diabetes and Digestive and Kidney Diseases, *at* http://www.niddk.nih.gov/federal/planning/mstrathealthplan.htm; and National Institute of Mental Health, *at* http://www.nimh.nih.gov/strategic/healthdisparities.pdf. This issue was considered so important that Congress recently created a national center at NIH, the National Center on Minority Health and Health Disparities ("NCMHD"), the mission of which is "to promote minority health and to lead, coordinate, support, and assess the

The consequences for the profession of psychology are several. For one, the profession needs to achieve the diversity that is reasonably representative of those it serves. "Racial and ethnic minorities continue to be badly underrepresented * * * within the core mental health professions – psychiatry, psychology, social work, counseling, and psychiatric nursing," and "the shortage of providers and researchers equipped to address the needs of minority populations will contribute to the disproportionate burden of mental illness on racial and ethnic minorities." *Id.* at 67.[43]

But it is equally or more important that all psychologists are culturally competent in their work. The HHS Report notes that the barriers to better mental health treatment of racial and ethnic minorities "include clinicians' lack of awareness of cultural issues [and] bias." *Id.* at 4.[44]

NIH effort to reduce and ultimately eliminate health disparities." See, National Center on Minority Health and Health Disparities, *at* http://www.ncmhd.nih.gov/about_ncmhd/ mission.asp.

[43] The APA has made it a formal policy priority to increase the recruitment and training of racial and ethnic minorities as psychologists. See the APA Resolution on Ethnic Minority Recruitment and Retention (Feb. 1994), *at* http://www.apa.org/pi/oema/oemares.html.

[44] See also *id.* at 10 ("[T]he interaction between clinician and patient is rife with possibilities for miscommunication and misunderstanding when they are from different cultures."), and 31 ("Clinicians may be more likely to ignore symptoms that the patient deems important, or less likely to understand the patient's fears, concerns, and needs. The clinician and the patient also may harbor different assumptions about what a clinician is supposed to

Indeed, in his Preface to the Report, the Surgeon General declares that its "main message" is "that culture counts" – that is, the culture of both the patient and the service provider. *Id.*, Preface.

In treatment, "cultural competency" describes an approach "driven by widespread awareness of treatment inadequacies for minorities." *Id.* at 36. It emphasizes the importance of patients' cultures and seeks to develop responsive skills and policies to deliver effective treatments to racial and ethnic minority groups.[45/] As the HHS Report states (at 36):

> Underlying cultural competence is the conviction that services tailored to culture would be more inviting, would encourage minorities to get treatment, and would improve their outcome once in treatment. Cultural competence represents a fundamental shift in ethnic and race relations (Sue *et al.*, 1998). The term *competence* places the responsibility on mental health services organizations and practitioners – most of whom are white (Peterson et al., 1996) – and challenges them to deliver culturally appropriate services.

The challenge is posed not simply to clinicians but to the psychology profession across the board. Thus, cultural competence is crucial to the ability of researchers to

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do, how a patient should act, what causes the illness, and what treatments are available.").

[45/] Derwald Wing Sue & David Sue, Counseling the Culturally Different: Theory and Practice 224-27 (3d ed. 1999).

understand and gain the confidence of research participants; to design valid and effective questionnaires and measures; and to understand and interpret results.[46/] Similarly, cultural competence is ever more necessary to psychologist consultants as corporate America and private and public institutions become increasingly diverse. And psychology professors, as much or more than any other group within the profession, must achieve cultural competence so that they may foster it in their students.

Recognizing the importance of these issues, the APA has issued two guidelines addressing multicultural issues. The first, "APA Guidelines for Providers of Psychological Services to Ethnic, Linguistic, and Culturally Diverse Populations," was enacted in 1990 to inform "all areas of service delivery." See http://www.apa. org/pi/oema/guide. html. It encourages psychologists in their practices to incorporate "an understanding of the client's ethnic and cultural background," to "consider not only different diagnostic issues but also cultural beliefs and values of the clients and his/her community," and to " work to eliminate biases, prejudices, and discriminatory practices." *Id.*[47/]

More recently, the APA's 2002 Guidelines on Multicultural Education, Training, Research, Practice, and Organizational Change for Psychologists reflect "the

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[46/] Stanley Sue *et al.*, *Ethnicity, Gender, and Cross-Cultural Issues in Clinical Research*, *in* Handbook of Research Methods in Clinical Psychology 54 (Philip C. Kendall *et al.* eds., 1999).

[47/] The APA's revised Ethical Principles of Psychologists and Code of Conduct, adopted in August 2002, also includes provisions concerning an awareness of, and competence involving, issues of race, ethnicity, and culture. See Ethical Principles of Psychologists and Code of Conduct, 57 Am. Psychol. 1060 (Dec. 2002), and especially Principle E and Standard 2.01(b).

continuing evolution of the study of psychology, changes in society at large, and emerging data about the different needs for particular individuals and groups * * * based on their ethnic/racial heritage * * *." The Guidelines seek to provide psychologists across the profession with the rationale "for addressing multiculturalism and diversity in education, training, research, practice, and organizational change," as well as the basic information and "current empirical research from psychology and related disciplines" on which the Guidelines are based. See www.apa.org/pi/multicultural guidelines.pdf, Preface, p. 1.

B. Diversity In Higher Education Is Critical To The Acquisition Of Cultural Competence.

A psychologist may strive to acquire cultural competence through professional education and training, but there is tremendous value in actual contact and interaction among students from diverse racial and ethnic backgrounds, who can teach each other about the concerns and values of their different communities, and whose intermingled presence will diminish the barriers to an understanding of each other's cultures. What Justice Powell said about medical students is no less true of psychology students:

> Physicians serve a heterogeneous population. An otherwise qualified medical student with a particular background – whether it be ethnic, geographic, culturally advantaged or disadvantaged – may bring to a professional school of medicine experiences, outlooks, and ideas that enrich the training of its student body and better equip its graduates to render with understanding their vital service to humanity.

Regents of the University of California v. *Bakke*, 438 U.S. 265, 314 (1978) (Opinion of Powell, J.). The same point had earlier been made with respect to law schools in *Sweatt* v. *Painter*, 339 U.S. 629, 634 (1950):

> The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts. Few students and no one who has practiced law would choose to study in an academic vacuum, removed from the interplay of ideas and the exchange of views with which the law is concerned.

These observations about the importance of diversity in higher education, based on self-evident lessons of human experience, are now bulwarked by the studies conducted and reviewed by Dr. Gurin, which show that students who experienced the most racial and ethnic diversity in classroom settings and in informal interactions with peers showed the greatest engagement in active thinking processes and growth in intellectual engagement and motivation. College is a period of great growth and development and a training ground providing preparation for entry into the diverse workforce. Thus the exposure to diversity during the years spent in higher education is particularly important.

In sum, racial and ethnic minorities will by mid-century account for half of America's population; they face a demonstrably greater burden from unmet mental health needs than the rest of the population; to meet those needs, the mental health community must attain cultural competence in approaches to diagnosis and treatment. Psychologists must also be culturally competent in all other facets of their work including research, industrial and organizational consulting,

and education. Diversity in higher education is critical to the goal of achieving cultural competence.

Our point about cultural competence is not limited to the profession of psychology, or even to the field of mental health generally, or of physical health, either. See, *e.g.*, Association of American Medical Schools, Cultural Competency in Medical Education and Practice (Mar. 2002); and T.K. Bikson & S.A. Law, Rand Report on Global Preparedness and Human Resources: College and Corporate Perspectives (1994) (the "Rand Report"). The Rand Report states (at 24) that "cross-cultural competence" is "the critical new human resource requirement for corporations that have espoused a global business strategy," and (at 51) "is the most important new attribute for future effective performance in a global marketplace." Hence the Nation itself, let alone its colleges and universities, has a compelling interest in providing all of its students with an educational environment sufficiently diverse to prepare them adequately for the future.

CONCLUSION

The judgment of the Court of Appeals in *Grutter* and of the District Court in *Gratz* should be affirmed.

Respectfully submitted,

NATHALIE F.P. GILFOYLE
GENERAL COUNSEL
LINDSAY CHILDRESS-BEATTY
DEPUTY GENERAL COUNSEL
AMERICAN PSYCHOLOGICAL ASSOCIATION
750 First Street, N.E.
Washington, DC 20002
(202) 336-5500

PAUL R. FRIEDMAN
COUNSEL OF RECORD
WILLIAM F. SHEEHAN
SHEA & GARDNER
1800 Mass. Ave., N.W.
Washington, DC 20036
(202) 828-2000

Counsel For Amicus Curiae
American Psychological Association
(including Division 9, the Society for the Psychological Study of Social Issues, and Division 45, the Society for the Psychological Study of Ethnic Minority Issues)